

10/771,999

REMARKS

The objections raised to the drawings, in PTO Form-948 accompanying the official action, are acknowledged by the Applicant. The drawings are amended as indicated and new formal drawings, overcoming all of the raised drawing objections, are enclosed herewith.

Regarding the election restriction requirement, the Applicant respectfully requests reconsideration of the same and takes issue with the contention that the apparatus of claim 1 can be made without using separate mold sections. As best the Applicant understands this proposition, the mold sections could be cut from a solid mold, for instance, starting from a solid mold, like the prior art, the fasteners could be initially secured to the solid mold and the mold sections subsequently cut therefrom. As an initial matter, it is not practically understood how such sections could be cut without accordingly cutting the fasteners as well, and without accounting for the mass of material removed during the cutting operation. If such a technique is possible, the Applicant is either unaware of such techniques to which the Examiner refers or is sufficiently unskilled in the art to accomplish such a technique.

Be that as it may, the matter of specifically "how" the separate sections of the mold are fabricated or formed is immaterial to the specifically claimed subject matter of claims 1 and 10. The method of claim 10 recites only the step of "forming a plurality of separate mold sections comprising at least a bottom section and a top section defining a sidewall extending therebetween . . .". This recited step includes whatever forming techniques could be practically utilized or imagined to make such individual mold sections of a mold, even the Examiner's contended technique. In other words, because in claims 1 or 10 there is no specifically recited subject matter pertaining to "how" such separate mold sections are formed, only that there are separate mold sections formed, obviously, the mold sections could be formed by any desired manufacturing technique known to those of skill in the art. Any such "formation" of the mold sections is thus encompassed by the claim language.

The touchstone of whether a restriction requirement is proper is, as discussed at MPEP § 806.05(e), "(A) that the process *as claimed* can be practiced by another materially different apparatus or by hand; or (B) that the apparatus *as claimed* can be used to practice another materially different process." Thus, in the present case, the process of claim 10 cannot be practiced by a solid mold, but must be practiced with a mold having separate mold sections; and accordingly, the apparatus recited in Applicant's claim 1 with separate mold sections cannot be used to practice another materially different process, for example a process utilizing a solid mold. Therefore, because any specific process of manufacturing the mold sections is encompassed with the step of "forming a plurality of separate mold sections . . ." as recited in claim 10, the Applicant respectfully requests that the Examiner reconsider the election/restriction requirement, and that such an election restriction requirement be withdrawn, and claims 10-15 be reinstated and examined on the merits.

Claims 5-9 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons noted in the official action. The rejected claims are accordingly amended, by the above claim amendments, and the presently pending claims are now believed to particularly point out and distinctly claim the subject matter regarded as the invention, thereby overcoming all of the raised § 112, second paragraph, rejections. Accordingly, the Applicant has amended claim 5 to differentiate the upper and lower surface of each mold section, from the top and bottom surface of the mold itself. Therefore, it is understood that the sidewall of each mold section extends between the respective upper surface and lower surface of each mold section.

Claims 1-9 are rejected, under 35 U.S.C. § 102(b), as being anticipated by Breezer et al. '628. The Applicant acknowledges and respectfully traverses the raised anticipatory rejection in view of the following remarks.

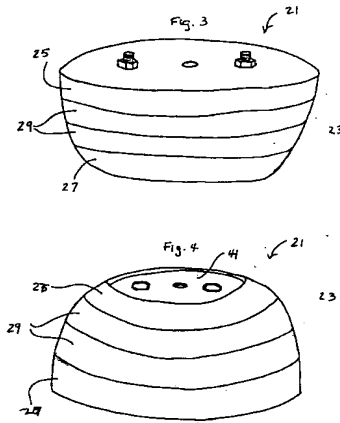
As the Examiner is aware in order to properly support an anticipation rejection under 35 U.S.C. § 102, the cited reference to Breezer et al. '628 must disclose each and every feature of the presently claimed invention.

Observing Breezer et al. '628, we note that substantially different from a basket mold about which a traditional handwoven basket is formed, Breezer et al. '628 relates to a wood and plastic pallet. A pallet is useful for generally allowing the storage and movement of different items, usually heavy and bulky items, to be handled, for instance, by a forklift truck. As an initial matter, the Applicant has amended the preamble of claim 1 to specifically recite that the present invention relates to basket molds for making a basket as recited in claim 1, "[a]n expandable *basket mold for making a basket* comprising. . .". As there is no disclosure, teaching or even a suggestion that a wood and plastic constructed pallet could be used in any manner as a mold, much less a handwoven basket mold, and in view of the fact that features in the preamble are considered by case law to be limiting, we do not believe that Breezer et al. '628 anticipates a basket mold as claimed. Noting the instructive Federal Circuit case of Kropa v. Robie, 88 USPQ 478, 481 (CCPA 1951) the MPEP § 2111.02 cites:

A preamble reciting 'an abrasive article' was deemed essential to point out the invention defined by claims to an article comprising abrasive grains and a hardened binder and the process of making it. The court stated "it is only by that phrase that it can be known that the subject matter defined by the claims is comprised of an abrasive article. Every union of substances capable inter alia of use as abrasive grains and a binder is not "an abrasive article" Therefore, the preamble served to further define the structure of the article produced.

Similarly, in the present invention every mold section does not constitute a basket mold. Therefore, the Applicant believes that because the applied reference has nothing whatsoever to do with a basket mold as now clearly recited in claim 1, and because no such feature as recited in the Applicant's claim is described, taught or even suggested by Breezer et al. '628 the anticipation rejection should be withdrawn.

An important difference can be seen by a visual comparison of Breezer et al. '628 with the Applicant's FIGS. 3 and 4, is that the present invention utilizes a plurality of mold sections which define a contiguous circumferential sidewall about which the basket is woven. Each of the plurality of mold sections has a sidewall portion which is contiguous between an upper and lower surface of each mold section and extends circumferentially about the entire mold. These mold sections are then stacked atop one another to define a contiguous, solid sidewall between the top and bottom of the mold.



Breezer et al. 628, because it is a pallet, cannot, in fact, have a contiguous sidewall as it defines openings, passages and spaces through which a forklift truck may insert its fork tines. In Breezer et al. '628, the top and bottom surfaces of the palette are separated and joined through a series of spacer blocks 34, 36. In particular, these spacer blocks 34, 36 are what define the tine openings 40 therebetween. This feature of Breezer et al. '628 is best described at column 3, lines 14-18, "the palette 20, as shown in FIGS. 1 and 5, is of the four way entry type, which allow the tines of a forklift to be inserted between the deck from any of the four palette sides 38 through tine openings 40 best shown in FIGS. 5, 6 and 7".

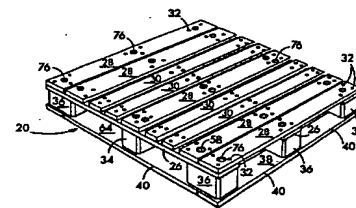


FIG. 5

Thus, the Applicant notes that this pallet is entirely different from the contiguous circumferential sidewalls as currently recited in claim 1 wherein, "a *contiguous circumferential sidewall* extending between a top surface and a bottom surface of the basket mold". Therefore, the Applicant also respectfully requests withdrawal of the anticipation rejection in light of amended claim 1 which is not disclosed taught or suggested in any manner by the cited reference.

In addition, the Applicant notes that another important feature of the present invention is that the contiguous sidewall of the mold is radially expands from the bottom surface of the mold to the top surface of the mold. Such a radial expansion of the sidewall provides for easy removal of the mold upon completion of the basket. Observing Breezer et al. '628, we note that even if this could be considered a mold, the sides apparently between the top and bottom surfaces of the palette are exactly the same size. In order to emphasize this aspect of the present invention, claim 16 and 17 are added. Claim 16 specifically recites "wherein the contiguous sidewall increases in radius between the bottom surface and the top surface of the mold".

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised anticipation rejection should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding anticipation rejection or applicability of the Breezer et al. '628 reference, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

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In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

In the event that there are any fee deficiencies or additional fees are payable, please charge the same or credit any overpayment to our Deposit Account (Account No. 04-0213).

Respectfully submitted,



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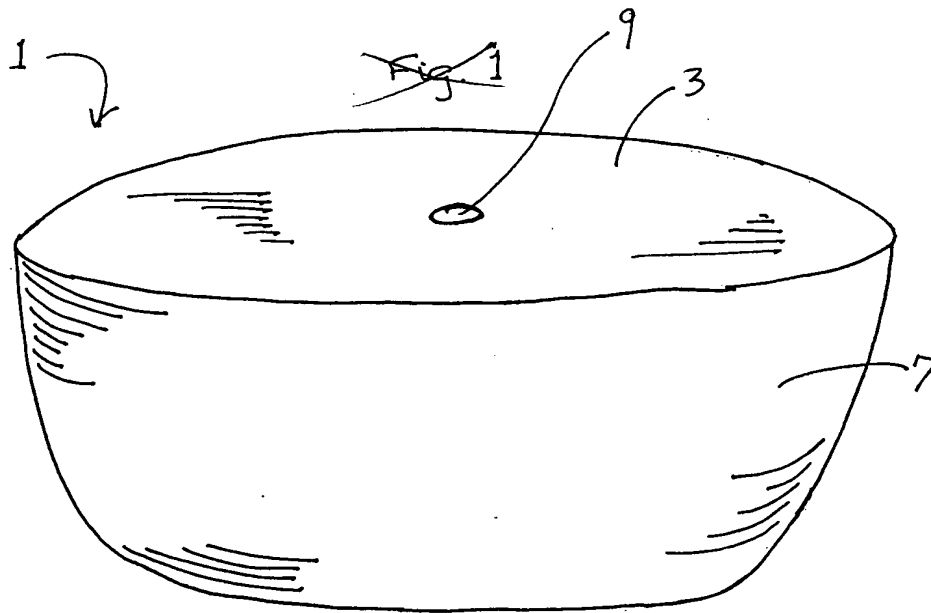


FIG. 1
PRIOR ART

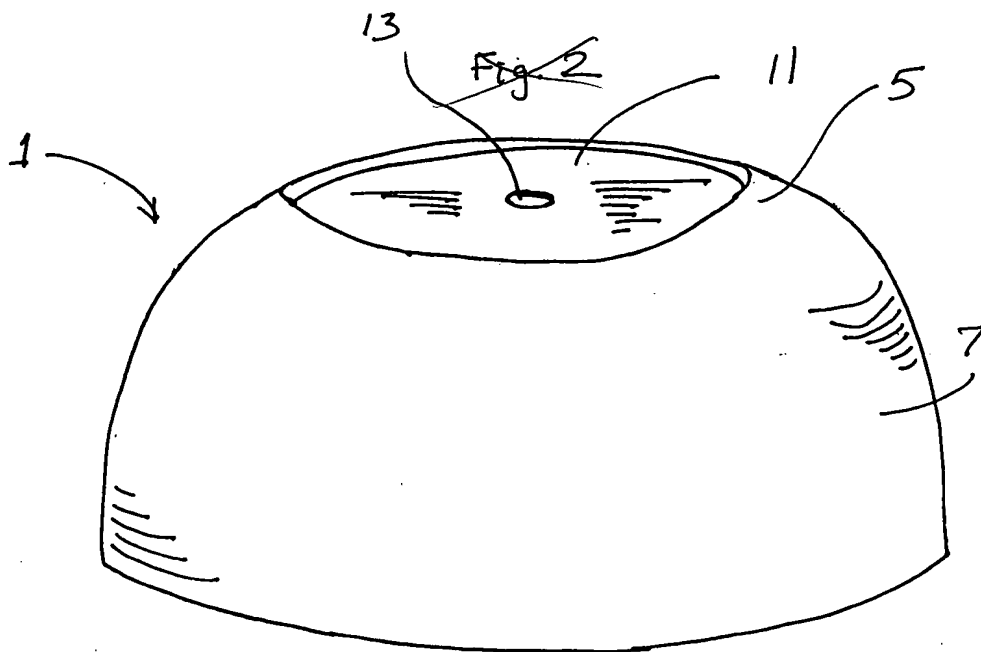


FIG. 2
PRIOR ART

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